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Natural Resource Trustees & Natural Resource Managers

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Caveats

- *The term “trustee” as used in this presentation applies only to how that term is used pursuant to CERCLA, CWA, OPA, and the NCP.*
- *The content of this presentation does not necessarily reflect the official position of the Department of the Interior.*

Natural Resource Managers & Natural Resource Trustees



Are they one and the same?

It Depends

- resource and land managers, and trustees do come from the same agency
- resource and land management agencies do have management responsibilities for trust natural resources

Trust Natural Resources

- Roman law concepts of common property
- early applications to coastal and navigable water issues
- Public Trust Doctrine - resources held in trust by state or federal governments for the benefit of the people
- doctrine now encompasses all natural resources

Trust Natural Resources

- land, fish, wildlife, biota, air, water, ground water, drinking water supplies and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the U.S.

The Trustees

- **Federal Official** — designated by the President
- **State Official** — designated by the Governor
- **Tribal Official** — designated by governing body of a Tribe
- **Foreign Official** — designated by the head of a foreign government

The Federal Trustees

- Department of the Interior
- Department of Commerce – delegated to NOAA
- Department of Energy
- Department of Agriculture
- Department of Defense
- any other Federal Land Managing Agency

Trustee Authorities

- NCP — 40 CFR 300.210(c)(4), 300.615(c)(3)(i), 300.615(a)
- CERCLA section 107(f)(2)
- CWA section 311, as amended by OPA section 1006
- authorize and direct the trustees to take appropriate actions necessary to protect and restore the natural resources under its trusteeship that have been injured by a release of a hazardous substance or discharge, or a substantial threat of discharge of oil.

What do Trustees do?

- participate in preparedness and response activities to avoid or minimize injury to natural resources
- assess damages for injury to, destruction of, or loss of natural resources under their trusteeship
- obtain compensation from the responsible party
- develop and implement a plan for restoration of injured resources

Trusteeship at DOI

- trustee responsibilities split
 - NCP Response and preparedness – OEPC is the Departmental representative with input and participation from the bureaus
 - activities associated with NRDAR – a bureau “Authorized Official” is delegated the authority to act on behalf of the Secretary to conduct a natural resource damage assessment, restoration planning and implementation.

What is a Resource Manager?

- have jurisdiction over parks, refuges, public lands, and certain water projects
- relevant expertise:
 - develop, administer, analyze &/or implement authorized programs
 - land, water, minerals, forests, oil, gas, agricultural, natural and cultural resources
 - surface and subsurface resources

Resource Manger's Authorities

- agency “Organic Act”
- enabling Legislation
- Congressional Acts
- Executive Orders
- agreements
- treaties

What do Resource Managers do?

- decisions are consistent with authorized purposes & management objectives
- manage resources to minimize impacts from allowable uses
- participate in preparedness and response activities to avoid or minimize impacts to resources under their management authority
- if Federal lands affected, Federal manager may sit in UC to provide guidance/concurrence on response and protection strategies consistent with the special status of the affected resources

Who are the Resource Managers?

- managers of designated areas
 - National Park System
 - National Wildlife Refuges and Fish Hatcheries
 - National Forests
 - National Marine Sanctuaries
 - State parks and wildlife management areas
 - Tribal lands
 - other land managing agencies

Who are the Resource Managers?

- program managers
 - wildlife
 - fisheries
 - habitat
 - recreation
 - cultural and historic
 - minerals
 - water

Oil Spills with Participation by:

Trustees

- Morris J Berman
- Highland Drilling
- Reedy River
- Tampa Bay
- Savannah River
- LMM Int'l Airport
- Mayfield-Hodges
- Guanica

Managers

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In Summary

- “trustees” are from agencies that have land and resource management responsibilities
- resource managers provide technical assistance and expertise for use by the OSC in response to and preparedness for NCP activities
- resource managers provide technical assistance and expertise for use in trustee activities (NRDAR)

In Summary

- while the Secretary of the Interior is designated as the trustee, the day-to-day responsibility to act on behalf of the Secretary is delegated on a case-specific basis (NRDAR)
- trustees take appropriate actions necessary to protect and restore the natural resources under its trusteeship that have been injured by a release of a hazardous substance or discharge of oil

Conclusion

- yes, resource and land managers are “trustees” not necessarily as defined under CERCLA and OPA, but as that term is used under the public trust doctrine
- “trustees” are agency staff members that work specific cases and/or develop policies and guidelines for NRDAR

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